

**Comments of the Commission on a request for information from the European Ombudsman**  
**- Complaint by Friends of Earth Europe, ref. 1956/2021/AMF**

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**I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

From 26 October 2020 until 08 February 2021 the European Commission conducted an online public consultation on the Sustainable Corporate Governance initiative.

The NGO “Friends of the Earth Europe” (FoEE) *inter alia* put in place on-line consultation tools that allowed citizens to take part in the consultations by directly responding to the consultation questions on a number of policy options, as well as the ability to provide their own particular contributions. The submissions were collected by two separate campaigns, one led by Global Witness, Anti-Slavery International and Clean Clothes Campaign, in partnership with Avaaz<sup>1</sup>. These submissions were sent directly to the Commission via the online portal. The other tool was led by FoEE, the European Trade Union Confederation, the European Coalition for Corporate Justice, the Austrian Chamber of Labour and the Austrian Trade Union Federation, in partnership with WeMoveEurope and SumOfUs and backed by more than 150 civil society groups<sup>2</sup>. These were partly sent directly to the Commission via the online portal and partly gathered as an online petition and submitted via a PDF to the Commission.

**II. THE COMPLAINT**

The complaint is two-fold:

1. 122.785 contributions are missing on the consultation website of the Commission.

122.785 contributions that were sent to the Commission in a PDF file by FoEE (on behalf of its partners) have been counted only as a single contribution and are reported as such on the website of the Commission.<sup>3</sup>

FoEE asked the Commission to include these contributions in the overall figures that are reported on the website of the Commission, but claims that this has not been done. The group therefore considers that the Commission failed to represent these 122.785 contributions in one of its main communication tools on the consultation.

2. Lack of reporting on substance of citizens’ contributions in the summary report

FoEE claims that the substance and content of the 595.390 (472.606 and 122.784) contributions from citizens have not been included in the summary report of the consultation. The reference in the summary is in their opinion not enough as it does not analyse and break down the views of the citizens. FoEE considers that the citizens’ input, which expressed clear and strong political views, has not been properly appreciated.

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<sup>1</sup> [https://secure.avaaz.org/campaign/en/eu\\_feb\\_2021\\_consultation/](https://secure.avaaz.org/campaign/en/eu_feb_2021_consultation/)

<sup>2</sup> <https://www.enforcinghumanrights-duediligence.eu/>

<sup>3</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation_en)

FoEE believes that these specific views on policy options submitted to the Commission should have been reflected in the summary report of the consultation, i.e. on the Commission's website. By not doing so, the group considers the way of reporting on citizens' contributions as unbalanced and unfair as well as not in line with commitments made by the Commission and with recommendations in the Better Regulation Guidelines.

In their opinion, the Commission's commitment to reflect on the input received from citizens in the impact assessment sent to the Regulatory Scrutiny Board cannot guarantee that the Commission provided an adequate analysis and report of the positions expressed by the citizens as the information is not public.

FoEE emphasises that public consultations are one of the means by which EU citizens can directly engage in EU policy. They therefore require a public acknowledgment of all citizens input in order to understand how such consultations contribute to meet the citizens' needs. In their view, the Commission must therefore include the content of the contributions of members of the public in the summary of results rather than compartmentalize and isolate these contributions.

They insist that in all public EU consultations, responses from members of the public, individual or mobilised through online consultation tools, should be analysed and reported on in a similar way as all other responses from stakeholders. Counting them as one response or not reporting on them in a summary report is not considered in FoEE's opinion as fair and balanced and respectful to the citizens concerned.

### III. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

On 26 October 2020, the European Commission opened an online public consultation on the Sustainable Corporate Governance initiative.

FoEE approached the Commission on 21 January 2021<sup>4</sup> enquiring about the possibility for WeMove and Sumofus to use a variation on the campaign tool FOEE, ECCJ, ETUC, AK Europa and OGB launched to ask citizens to respond to the open public consultation which would potentially yield tens of thousands of individual responses, and instead send the list of names of citizen responses they collect in a PDF document. FoEE asked the Commission if it would in this case **communicate the total number** of citizen replies, **rather than treating this as one reply to the consultation**.

As confirmed on 27 January 2021, FoEE was informed that if it were to choose this option, the Commission would then **reference the reply by indicating the number of respondents** that it represents. The Commission also asserted that as it has no means of verifying these signatures, the responsibility of checking the authenticity of these respondents lies with FoEE.

As communicated to FoEE on 2 February 2021<sup>5</sup>, since the "Have your say" consultation response form did not allow for PDF attachments, if stakeholders opted to submit additional documents/position papers outside the public consultation, they could send an email to the mailbox JUST CLEC, and the Commission would **duly consider** those in the context of its

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<sup>4</sup> Please refer to Annex 1.

<sup>5</sup> Please refer to Annex 1.

consultative activities preparing the initiative. The Commission **confirmed** once more to FoEE on 3 February 2021<sup>6</sup> that the **number of signatures will be referred to in the Impact Assessment**.

On 8 February 2021, the Open Public consultation for the Sustainable Corporate Governance initiative closed, generating **473.461 public responses, one of which had 122.785<sup>7</sup> supporting citizen signatures<sup>8</sup>**. In addition, 149 position papers were received outside of the EU Survey. Of the 473.461 total responses submitted through EU Survey, 472.606 responses have been identified by the Commission as generated by campaigns. These responses as well as the 122.785 supporting citizen signatures were segregated and analysed separately from the non-campaign<sup>9</sup> responses.

The [Commission's Better Regulation Toolbox](#)<sup>10</sup> recognises campaigns organised during open public consultations as “very effective in order to generate interest amongst stakeholders and to highlight key messages for policy makers” but also as “a challenge for those analysing the responses to a public consultation”. The Toolbox considers as **essential to identify campaigns, analyse them separately and present results adequately**.

At the same time, the Toolbox states that the factual summary report of the open public consultation should “give a concise and balanced overview of contributions received during a specific consultation activity”<sup>11</sup>.

The **factual summary is therefore not meant to include the detailed content** of the contributions of members of the public **but only to provide its overview**. As responses that have been identified as submitted through campaigns were segregated and analysed separately from the non-campaign responses, only the remaining 855 responses were further broken down in the short factual summary report<sup>12</sup>, which was to be published soon after the closure of the Open Public Consultation. However, all stakeholder input (473.461 total responses and 149 position papers, including the 122.785 citizen signatures) was explicitly referred to in the factual summary report and analysed in Annex 2 to the Impact Assessment accompanying the legislative proposal and published in the Register of Commission Documents<sup>13</sup>. By doing so, the Commission treated all contributions equally in a fair and balanced way informing the preparation of the proposal and the political decision making. It also **adequately presented the results of the campaign as required by the Better Regulation Guidelines**.

Following FoEE's initial complaint about the initial omission of explicit mention of the 122.785 supporting citizen signatures, in agreement with Secretariat General the **content of the factual summary<sup>14</sup>, was amended<sup>15</sup>** by the Commission to better reflect the inclusion of

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<sup>6</sup> Please refer to Annex 1.

<sup>7</sup> Please refer to Annex 2.

<sup>8</sup> The PDF submitted by FoEE was a list of names who signed the petition and who support the consultation process but whose validity cannot be verified by the Commission as in the case of EU survey responses on the Have your say portal.

<sup>9</sup> The complete analysis is available in Annex 2 of the Impact Assessment

[https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2022\)42&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2022)42&lang=en)

<sup>10</sup> Better Regulation Toolbox, p. 472.

<sup>11</sup> Better Regulation Toolbox, p. 478 “Box 3: Factual summary report”.

<sup>12</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation_en)

<sup>13</sup> [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2022\)42&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2022)42&lang=en); see in particular section 4.2. of Annex 2.

<sup>14</sup> Please refer to Annex 3.

citizen responses. FoEE had been informed by the Commission in its letters<sup>16</sup> from 14 July 2021 (Ref. Ares(2021)4557289) and 24 September 2021 (Ref. Ares(2021)5843606) of the update in response to its request, reminded of the nature of the factual summary report, assured that all citizens input has been acknowledged, its content given full consideration alongside the other stakeholder contributions to the consultation and assured that it will be analysed in the synopsis report accompanying the Impact Assessment, published together with the proposal<sup>17</sup>.

As regards the analysis of the consultation feedback, the Commission ascertains that the PDF document **signatures in question have not been counted as a single contribution nor are they missing on the consultation website of the Commission**, as claimed by the complainant. The relevant documents that informed the preparation of the Impact Assessment are the factual summary report, and more importantly Annex 2 of the Impact assessment. The pie chart which is automatically generated on the Consultation website<sup>18</sup> is a statistical representation of the valid feedback instances and as such cannot technically include signatures provided in a PDF document sent to the Commission functional mailbox. It serves as a simple visual aid and does not in any way constitute a complete representation of all the stakeholder inputs received throughout the consultation process.

The Commission is strongly committed to the Better Regulation approach, ensuring high quality and transparency of its legislative proposals. This initiative was met with widespread interest, as witnessed by the large number of replies in the public consultation as well as numerous contributions from a broad range of stakeholders. All inputs were considered carefully and potential impacts duly assessed, based on a broad range of evidence. The Commission has **transparently communicated with the stakeholder in question on numerous occasions**<sup>19</sup> and has tried to **accommodate the needs of this stakeholder**, at the same time adhering to the fair treatment of all stakeholders who participated in the consultative process.

#### IV. CONCLUSIONS

In conclusion, the Commission **communicated the total number of citizen replies** and did **not treat it as a single reply**, thereby fully honouring the request of the complainant<sup>20</sup>. It openly communicated and accommodated the needs of the complainant to the best of its ability following the Better Regulation Guidelines and therefore considers that **no maladministration has taken place** in this case.

Commission services heard and understood FoEE's concerns on ensuring that the Commission is properly informed during the preparation and adoption of the legislative proposal. The Commission's answer of **amending the content of the factual summary** to further highlight the number of citizen responses, **continuously reassuring FoEE that all stakeholder views are equally taken into account** and analysed to inform the Impact

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<sup>15</sup> Please refer to Annex 4.

<sup>16</sup> Please refer to Annex 5.

<sup>17</sup> [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2022\)42&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2022)42&lang=en)

<sup>18</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation_en)

<sup>19</sup> Please refer to Annex 1.

<sup>20</sup> Please refer to Annex 1.

Assessment and **presenting the substance of the citizens' contributions in Annex 2 of the Impact Assessment**, was the best and only appropriate way to make the procedure more transparent and address FoEE's concerns thereby following Better Regulation Guidelines.

The Commission does not consider further steps as necessary.

The proposal for a Directive on Corporate Sustainability Due Diligence was adopted by the Commission (COM(2022)71) on 23 February 2022.

*For the Commission*

*Didier REYNDEERS*

*Member of the Commission*